

February 18, 2009

Bureau of State Audits
c/o Barbara Paget
555 Capitol Mall, Suite 300
Sacramento, CA 95814

RE: Public Comments by Kim Alexander, President and Founder, California Voter Foundation, on the Citizens Redistricting Commission

I am pleased to provide for the record the comments I delivered at the public meeting held by the Bureau of State Audits on January 26, 2009, in Sacramento, California.

I appeared in my capacity as President and Founder of the California Voter Foundation (CVF), a nonprofit, nonpartisan 501(c)(3) organization advancing the responsible use of technology to improve the democratic process. To that end, CVF has on its web site, among other resources, a California Map series. This features California political district maps we created in PDF format in 2001, as well as maps we created in collaboration with UC Berkeley following the 1991 redistricting process.¹

My comments today focus on six topics: (1) the Applicant Review Panel; (2) the Commission Application Process; (3) Random Selection; 4) Transparency in and Public Access to the Process; (5) Funding; and (6) Independent Voters.

1. The Applicant Review Panel

The authors of Proposition 11 (the Voters FIRST Act), as well as the voters who approved the measure, gave the State Auditor the job of making the Citizens Redistricting Commission a reality because the Bureau of State Audits is a trustworthy agency. There are already many people working at the Bureau who understand the problems associated with the proper implementation of state mandates and will welcome the opportunity to spell out in detail how the duties of the Applicant Review Panel are to be performed. And they will surely insist that the process be open and transparent.

I have some additional suggestions to offer about ways in which the State Auditor can maintain the independence and integrity of the Applicant Review Panel:

¹ The 2001 maps are available at <http://www.calvoter.org/voter/maps>; the 1991 maps are at <http://www.calvoter.org/voter/maps/1991/index.html>.

1. Set up accountability mechanisms that will insulate the review panel from potential accusations of bias (such as periodic public reporting of any outside income earned by panel members as well as any partisan political activities).
2. Publish online the review panel's credentials and biographies.
3. Have the review panel take an oath to execute the law faithfully and to the best of their ability. This is election-related work, and it is not unprecedented to require key figures, such as pollworkers, to swear an oath to uphold the state Constitution and the laws of California.
4. Designate an ombudsman in the Office of the State Auditor, as a person with whom concerned citizens can register complaints about the work of the Review Panel.

2. Commission Application Process

In order to gain the legitimacy that will make it successful, the Citizens Redistricting Commission needs to attract the most qualified people to volunteer, and to serve as Commission members, if they are selected. To this end, would-be applicants must find it easy to determine their eligibility and to understand fully what qualifies or disqualifies applicants. The following recommendations are offered:

1. Make it easy for people to apply, making as much use as possible of email and web forms.²
2. Publish on the appropriate page on the State Auditor's web site³ a clear statement of what qualifies someone for service on the Commission, and what is disqualifying. Having these criteria published plainly and clearly online at the beginning of the application process is an essential precondition for explaining later to some applicants why they were disqualified.
3. State clearly online the restrictions that will be in place to limit the ability of Commission members to run for office or work in the Legislature for several years after their appointment.
4. Consider implementing a "stepped" application process so that applicants go through several rounds in the process (such a process could help "weed out" ineligible applicants early on, thus saving time for both the applicants and the review panel).
5. Make applications accessible to the public online, after redacting sensitive, private information. Applicants will need to be informed ahead of time that the State Auditor will make all applications public.
6. Determine whether Commission members must file statements of economic interest and, if so, inform applicants ahead of time about this requirement.
7. The application form itself needs to contain enough specific questions to permit a determination of whether applicants meet at least a threshold test of qualification. The specific questions must also be clearly related to the criteria for selection set

² The online application process might consider, for example, a software application like SurveyMonkey[0], <http://www.surveymonkey.com/>.

³ <http://www.bsa.ca.gov/bsa/prop11.php>.

out in Proposition 11.⁴ The questions must be sufficient, in other words, to permit the review panel to narrow the full applicant pool to sixty (60) applicants based on consideration of their analytical skill, impartiality, and appreciation of California's diversity. The State Auditor, in my view, should also use the application form to gauge applicants' familiarity (a) with the language and requirements of the Proposition itself; (b) with the constitutional and legal context in which redistricting occurs; and (c) whether the applicant has any expertise in local, regional or statewide planning.

8. Once the application form is available in draft form, it should be formally noticed and published for public review and comment, in much the same way as the state's official Voter Information Guide is made available for public review before it is finalized, printed, and distributed.

3. Random Selection

As you are aware, both the application review panel and the initial eight members of the Commission must be selected through a random selection process. In addition to being random, this process must be transparent and *verifiably* random such that any individual that is not chosen can convince themselves that they fairly lost what is essentially a coin toss.

Another election-related process that calls for publicly-verifiable random selection is the random selection of precincts whose ballots must be tallied by hand to verify the accuracy of computer vote counts.⁵ Random selection methods for selecting precincts have been debated in the election community over the past five years.

Research by computer science and public policy experts at UC Berkeley has concluded that using a ten-sided dice is the easiest and most transparent method for selecting the manual tally precincts.⁶ For example, in Marin, San Mateo and Yolo counties, three ten-sided dice are rolled and the digits can be read off as a three-digit number between 000 and 999. On the contrary, using software to conduct random selection is considered by many to be the least transparent such process because it is exceedingly difficult to know that the software is truly behaving in a random manner.

In addition to using a publicly verifiable source of randomness for the random selection, some counties employ webcams so the public can watch the selection process.

⁴ Government code section 4.1, Chapter 3.2, section 8252 (d) reads: "*From the applicant pool, the Applicant Review Panel shall select 60 of the most qualified applicants....(t)hese subpools shall be created on the basis of relevant analytical skills, ability to be impartial, and appreciation for California's diverse demographics and geography.*"

⁵ See Election Code Section 15360.

⁶ Cordero, A., Wagner, D., & Dill, D. (2006). *The Role of Dice in Election Audits---Extended Abstract*. IAVoSS Workshop on Trustworthy Elections 2006 (WOTE 2006). Retrieved January 25, 2008, from <http://www.cs.berkeley.edu/~daw/papers/dice-wote06.pdf>.

Some counties, such as Alameda County, choose a method of publicly verifiable random selection different from the dice method above. Alameda instead uses ten numbered ping pong balls in a rotating hopper to choose the digits for selecting precincts. Note, however, that pulling names or numbers out of a hat is not a good method because it's not easy to verify that every possible number is in the hat and that no errant or duplicate numbers have been included. In this case, a good option is a lottery/bingo ball approach, where the only digits are 0-9, as mentioned above. I understand the Fair Political Practices Commission uses a similar method in some of its audit procedures and the California Secretary of State conducts public random alphabet drawings to choose the order of candidate names on ballots.

In any event, when you begin to decide on a publicly verifiable random selection process, I urge you to seek expert input.⁷ Each candidate should have the same probability of being selected, and each candidate should be able to understand exactly how the selection is performed and that the process is free of bias.

4. Transparency in and Public Access to the Process

The Bureau of State Audits can and should establish a standard for transparency and ease of public access early on in the Proposition 11 implementation process, as is called for in the Voters FIRST Act:

*"The reform takes redistricting out of the partisan battles of the Legislature and guarantees redistricting will be debated in the open with public meetings, and all minutes will be posted publicly on the Internet. Every aspect of this process will be open to scrutiny by the public and the press."*⁸

And:

*"(The commission) shall conduct an open and transparent process enabling full public consideration of and comment on the drawing of district lines."*⁹

The early and explicit embrace of these objectives by the State Auditor will set the tone for how the rest of the implementation process unfolds. Specific steps the Bureau of State Audits can take to advance transparency and openness include:

⁷ One of the California Voter Foundation's board members, Joseph Lorenzo Hall, has examined random selection and has found that small deviations from an expert-designed process can lead to non-uniform randomness, i.e. produce results where some applicants might be selected more often than others. See Hall, J. L. (2008). *Research Memorandum: On Improving the Uniformity of Randomness with Alameda County's Random Selection Process*. UC Berkeley School of Information. Retrieved April 11, 2008, from http://josephhall.org/papers/alarand_memo.pdf.

⁸ Proposition 11, "Findings and Purpose", SEC.2 (d).

⁹ Article XXI, SEC. 3.3, Sec. 2(b)(1).

1. Publish on the State Auditor's web page for the implementation of Proposition 11 the graphs and flowcharts included in the earlier Legislative Analyst's Proposition 11 ballot pamphlet analysis. This will also help with the application process.
2. Provide links to official district maps from previous redistricting. CVF has maps from 1991, when a panel of independent judges drew the lines. This is a useful basis for comparison with the gerrymandered districts yielded by the 2001 redistricting, which can also be accessed from the CVF web site.
3. Publish online a complete timeline for the development of the Commission and its work.
4. Publish online the full text of Proposition 11. Rather than link to the current online version, which is hard to read because of the use of small, italicized font in the sample ballot text, make a fresh version of the text available.
5. Provide parking suggestions for people interested in attending the public meetings the Bureau is holding on the implementation of Proposition 11. Parking in the vicinity of state buildings is often very difficult to find, especially for people who are not regular visitors to the chosen location.

5. Funding

The State Auditor needs to determine through a process that is as open and transparent as possible how much money is going to be needed for the implementation of Proposition 11, and how this funding will be built into the development of the Governor's annual budget. The reliance on webcasting and the archiving of videos as part of the implementation process, while recommended, can be expensive. The current Governor of California supports this reform, and that support needs to be translated into an assurance that the funding needed to truly meet the objectives of Proposition 11 will be requested and provided.

6. Independent Voters

Lastly, I would like to draw the Bureau's attention to an apparent contradiction in the text of Proposition 11 regarding the role that independent voters are to play on the Citizens Redistricting Commission.

The "Findings and Purpose" section of the initiative states that this reform:

*"...will give us an equal number of Democrats and Republicans on the commission and will ensure full participation of independent voters – whose voices are completely shut out of the current process. In addition, this reform requires support from Democrats, Republicans and independents for approval of new redistricting plans."*¹⁰

However, in a later section of the initiative, it states:

¹⁰ SEC. 2(c).

“The Citizens Redistricting Commission shall consist of 14 members, as follows: five who are registered with the largest political party in California based on registration, five who are registered with the second largest political party in California based on registration, and four who are not registered with either of the two largest political parties in California based on registration.”¹¹

Based on these criteria, the four members of the commission who are not registered with either the Democratic Party (which is the largest political party) or the Republican Party (the second largest party) could be independent voters or could be registered with one of the state’s four minor parties.

According to the most recent Report of Registration published by the Secretary of State¹², independent voters comprise nearly 20 percent of all of the state’s registered voters, while voters registered to qualified and unqualified minor parties comprise only 4.3 percent of the state’s voters. Given the fact that one in five California voters is registered as independent, and that the stated purpose of Proposition 11 is to give a voice to independent voters specifically in the redistricting process, it is important that the final selection process be designed to ensure that some of the four slots reserved for voters not registered with either major party will be reserved for independent voters.

I applaud the State Auditor for moving quickly to develop regulations for the implementation of Proposition 11. Along with many others, I particularly appreciate the decision to hold a series of public meetings across the state. This is both a necessary and appropriate way, in my view, to gather public input on the further development of a reform that is both important and complex and very much in need, therefore, of wide public discussion.

Sincerely,

Kim Alexander
President

¹¹ SEC.3.3, Sec.2 (c)(2).

¹² California Secretary of State, *Report of Registration* (October 20, 2008), online at <http://www.sos.ca.gov/elections/ror/ror-pages/15day-presgen-08/ror-102008.htm>.